Supreme Court, U.S.
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No. 06-799

In The
Supreme Court of the United States

D.T. & M.T.ON BEHALF OF MINOR CHILD, N.T.,

Petitioner,

v.

BRIDGEWATER-RARITAN REGIONAL BOARD OF EDUCATION,

Respondent,

Petition for a Writ of Certiorari to the New Jersey Supreme Court

Petition for a Writ of Certiorari

Dominick Theresa
Bx 10777
New Brunswick, NJ 08906
908-208-1960

December 4, 2006

QUESTION PRESENTED

1. Whether the New Jersey Supreme Court inadequately handled and ignored the Pro se Petitioner's Prima Facie evidence, in which all Pro-se Petitioners are not treated equally under N.J.A.C. 6A:3-8.1 and that the Education Law Center of New Jersey recognized this and strongly urged the New Jersey Department of Education that these Rules & Regulations be modified to extinguish any and all discrimination from one Pro se Petitioner to another, as these rules are currently not in compliance with the federally-required law of the No Child Left Behind (NCLB) Act.

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In The

Supreme Court of the United States

No.----------

D.T. & M.T.ON BEHALF OF MINOR CHILD, N.T.,

Petitioner,

v.

BRIDGEWATER-RARITAN REGIONAL BOARD OF EDUCATION,

Respondent,

Petition for a Writ of Certiorari to the
New Jersey Court of Appeal,
Appellate Division

Petition for a Writ of Certiorari

The Petitioners, State of New Jersey prays that the Court issue a Writ of Certiorari to review the judgment of the Court of Appeal for the State of New Jersey, Supreme Court.

OPINIONS BELOW

New Jersey State Board of Education, Dismissed

consolidated appeal dated February 2, 2005 (Appendix 1A).

The Per Curiam of the Court of Appeal of New Jersey, Appellate Division on May 12, 2006 (Appendix 2a to 5a).

New Jersey Supreme Court denied the Petition for Certification, on September 8, 2006 (Appendix 4a).

JURISDICTION

New Jersey Supreme Court denied the Petition for Certification on September 8, 2006. (Appendix 4a)

This Court has Jurisdiction under 28 U.S.C. § 1257.

CONSTITUTIONAL AND STATUTES INVOLVED

Sixth Amendment: The right to conduct his or her own defense as necessary to a fair trial under the Due Process clause and to have compulsory process for up obtaining witnesses and his favor.....7

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STATEMENT OF THE CASE

Petitioners N.T. and M.T. on December 20, 2002 had met with the Bridgewater-Raritan middle school Principal to try and clear up an alleged incident, which had involved their son, minor N.T. The incident did not get resolved at this level, nor multiple levels after that either. So the Petitioners had then filed an appeal with the Commissioner of the New Jersey Department of Education and on good gesture, sent a copy of this appeal to the Bridgewater-Raritan Board of Education. The petitioners were not required to do so, as they were presumably following rule **N.J.A.C.** 6A:3-8.1, for "Pro se Petitioners" to file their appeals, which states that petitioners need not submit their appeal to the Respondent Board of Education, but to file it directly with the Bureau of Controversies and Disputes, within the New Jersey Department of Education. The Bureau of Controversies and Disputes received the appeal and sent acknowledgement to the Board Attorney, that they had received the Petitioner's

appeal. The Board Attorney then began to continuously try to avoid the appeal, by saying that the Petitioner was responsible for sending a copy of the appeal to him. The Board Attorney was stating that the rule in which the petitioners were following, was not the correct rule and that they were inaccurately following N.J.A.C. 6A:3-8.1, was insufficient because that rule only applied to appeals concerning a child's right to attend school and that these appeals from the petitioners concerned the son's alleged suspension from riding the school bus, but not his exclusion from school. Therefore, the Board Attorney was claiming that they were allegedly not following the correct rule, so for that reason, their appeal should not be acknowledged.

However, the Bureau of Controversies and Disputes, after reviewing rules and evidence provided by the Pro se Petitioners, sent a letter to the Board Attorney, dated February 26, 2004, stating that the Petitioners had satisfied and was in accordance with Rule **N.J.A.C.** 6A:3-1.3(a) and

(c) and 4 under "Filing and service of petition of appeal". Nevertheless, the Board Attorney refuted this and he and the Petitioner then proceeded to go through multiple levels to argue this disagreement, as the Petitioners had a right to their appeal being given "Due Process to a Fair Hearing".

During this time, Bridgewater-Raritan Board of Education had also placed seven (7) more alleged incident's upon N.T.. The Petitioners N.T. and M.T. now had filed a total of eight (8) separate petitions of appeals with the Commissioner of Education. All 8 separate petitions of appeals were then filed with New Jersey State Board of Education. The State Board of Education than consolidated all 8 petitions of appeals and addressed it into just one (1) appeal. This 1 appeal then was filed upon the Superior Court of New Jersey Appellate Division and the Supreme Court of New Jersey as it was only addressing how all "Pro se Petitioner (s)" should be treated and equal.

REASONS FOR GRANTING THE WRIT

1. The Issue Of How N.J.A.C. 6A:3-8.1 Discriminates Against One Pro se Petitioner To Another, Causing Confusion And Harm To The Pro se Petitioners Filing Their Own Appeal And Should Be An Important Issue Of Federal Law Which Should Be Addressed By The U.S. Supreme Court And Be Of Substantial Importance For The General Public And All Pro Se Petitioners.

By accepting this writ and correcting this matter, it would ensure that all Pro se Petitioners are treated with fair, equal justice, Due Process to a Fair Hearing under the **Sixth and Fourteenth Amendments** and are not discriminated against in any filing of petitions/appeals and are in accordance with the **N.J.A.C.** 6A:3-1.3. Requirements of **TITLE** 18A and **TITLE** 6A of Education.

The Education Law Center of New Jersey has recognized this by providing a letter dated September 1, 2004, that this particular rule causes distress and unfairness and strongly urged the New Jersey Department of Education that these

Rules & Regulations must be modified to present a clear understanding for Pro se Petitioners, as these rules are currently not in compliance with the federally required law of the No Child Left Behind **(NCLB) Act**.

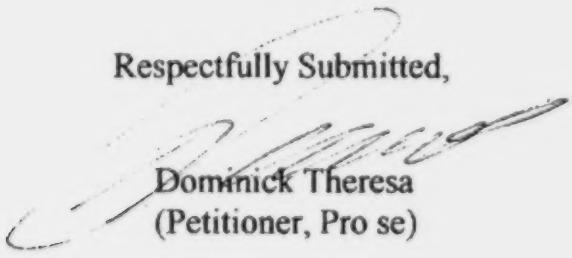
The Department and the State Board are not compliant with the federally-required law, NCLB Act, as it requires the state educational agencies to have "the adoption of written procedures for the receipt and resolution of complaints alleging violations of law in the administration of the programs for the filing of **NCLB** complaints".

Thus, **N.J.A.C.** 6A:3-8.1 needs to either be modified to fit the required rules and also conform to unprejudicial behavior from one Pro se Petitioner to another, as not to cause any confusion and unnecessary loss of cases for the Pro se Petitioner.

CONCLUSION

This Court should grant this Petition for Writ of Certiorari to D.T. & M.T., Pro se Petitioner's. The above prima facie merits clearly show that one Pro se Petitioner should not be discriminated against another, but all treated equal and in compliance with the federally required laws of receiving Due Process to a Fair Hearing. This case would affect and present substantial questions to the General Public Importance, upon all future "Pro se Petitioners".

Respectfully Submitted,



Dominick Theresa
(Petitioner, Pro se)

Dominick Theresa
Bx 10777
New Brunswick, NJ 08906
908-208-1960

Appendix

[filed: February 2, 2005]

NEW JERSEY STATE BOARD OF EDUCATION

Docket No. 45-03, 9-04, 24-04, 25-04,
26-04, 27-04, 28-04, 29-04 *(Consolidated)*

D.T. & M.T.ON BEHALF OF MINOR
CHILD, N.T.,

Petitioner/Appellant,

v.

BRIDGEWATER-RARITAN REGIONAL
BOARD OF EDUCATION,

Respondent/Respondent,

Consolidated appeal dismissed.

s/ The Commissioner William L. Librera,
Secretary, State Board of Education

Appendix

[filed: May 12, 2006]

SUPERIOR COURT
OF NEW JERSEY APPELLATE DIVISION

Docket No. A—3629-04T1

D.T. & M.T.ON BEHALF OF MINOR
CHILD, N.T.,

Petitioner/Appellant,

v.

BRIDGEWATER-RARITAN REGIONAL
BOARD OF EDUCATION,

Respondent/Respondent,

Per Curiam

Petitioners D.T. and M.T. appeal from a final decision of the State Board of Education dated February 4, 2005, dismissing eight consolidated appeals concerning disciplinary actions taken against their son, N.T.

The relevant facts are as follows. D.T. and M.T. filed a series of appeals seeking to challenge disciplinary action

imposed on their son by the Bridgewater-Raritan Regional School District. The appeals were consolidated and petitioners filed a brief in support of their appeal, but they failed to serve the brief on the School District's attorney. They claimed that they mailed a copy to the School District offices, but the District contended that it never received the papers. The Director of the State Board Appeals Office repeatedly directed petitioners to serve their brief on the School District's attorney, and petitioners repeatedly refused to do so. Hence, their appeal was dismissed.

Having reviewed the record, we conclude that the petitioners' arguments are without sufficient merit to warrant discussion in a written opinion, R. 2:11-3 (e) (1) (E) , and we affirm substantially for the reasons set forth in the February 4, 2005 written decision of the State Board of Education. We add the following comments.

The Administrative Procedure Rules, which apply to all State agency contested cases, require that briefs be served on the opposing party's attorney:

> Any paper filed shall be served in the manner provided by (a) above upon all attorney or other representatives and upon all parties appearing pro se, either before filing or promptly thereafter unless otherwise provided by order.

The regulation on which petitioners rely, N.J.A.C. 6A:3-8.1, is inapplicable because that rule only applies to appeals concerning a child's entitlement to attend school; these appeals concerned petitioner's son's suspensions from riding the school bus and possibly other issues, but not his exclusion from school.

Although petitioners were representing themselves, they were required to follow the applicable procedural rules like any other litigants. They were also obligated to follow the State Board's directions with respect to perfecting their

appeal. They repeatedly refused to do so. Their appeal was properly dismissed.

Affirmed.

s/ The Honorable Coburn and S.L. Reiser

Appendix

[filed: September 8, 2006]

IN THE SUPREME COURT OF NEW JERSEY

Docket No. 59,688

D.T. & M.T.ON BEHALF OF MINOR CHILD, N.T.,

Petitioner/Appellant,

v.

BRIDGEWATER-RARITAN REGIONAL BOARD OF EDUCATION,

Respondent/Respondent,

Petition for Certification is denied.

s/ The Honorable Virginia A. Long
Presiding Justice

(2)

No. 06-799

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

D.T.,

Petitioner,

v.

BRIDGEWATER-RARITAN REGIONAL BOARD OF EDUCATION,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION

BRIEF IN OPPOSITION

NICHOLAS CELSO, III
Counsel of Record
STEPHEN J. EDELSTEIN
JACQUELYN A. PELOSI
CHRISTOPHER R. WELGOS
SCHWARTZ SIMON EDELSTEIN
CELSO & KESSLER LLP
Attorneys for Respondent
10 James Street
Florham Park, NJ 07932
(973) 301-0001

206525

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

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COUNTER-STATEMENT OF THE CASE

This matter involves the dismissal of Petitioners' pro se appeal to the New Jersey State Board of Education due to Petitioners' repeated refusal to serve their appeal brief on the attorney for the Board of Education of the Bridgewater-Raritan Regional School District, Respondent below. The pertinent State administrative procedure regulations, as well as the State Board of Education's explicit direction, required the subject service.

Petitioners filed eight separate petitions of appeal with the Commissioner of the New Jersey Department of Education ("Commissioner") challenging disciplinary actions taken against their son (*e.g.*, son's suspension from riding the school bus) by the Board of Education of the Bridgewater-Raritan Regional School District ("Board"). The Commissioner dismissed the petitions and Petitioners filed appeals to the New Jersey State Board of Education ("State Board"). The appeals were consolidated and Petitioners filed a brief in support of their consolidated appeal.

The Director of the State Board Appeals Office ("Director") notified the Petitioners that neither the Board nor the Board's attorney had received a copy of Petitioners' appeal brief, despite the fact that Petitioners submitted a proof of service of their brief on the Board at its administration building. The Director informed Petitioners that they had the responsibility to provide a copy of their brief to the Board's attorney and specifically directed them to do so. The Director provided Petitioners with the Board's attorney's name and address. Petitioners refused to serve the Board's attorney, insisting to the Director that it was the Board's responsibility to forward all submissions to their attorney.

The Director again advised the Petitioners that it was their responsibility to serve a copy of their brief on the Board's attorney and directed them to do so. The Director warned that failure to comply with this requirement would result in the referral of the matter to the Legal Committee of the State Board for consideration of Petitioners' failure to perfect their appeal. Again, Petitioners refused to serve their brief upon the Board's attorney.

Ultimately, Petitioners never served their appeal brief on the Board's attorney. Consequently, the State Board dismissed Petitioners' consolidated appeal due to Petitioners' willful noncompliance with the procedural regulations.

The Petitioners appealed the dismissal to the Superior Court of New Jersey, Appellate Division ("Appellate Division"), which affirmed the decision of the State Board. Finally, the Petitioners submitted a Petition for Certification to the New Jersey Supreme Court, which denied certification.[1]

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1. Petitioners failed to include in their appendix, as required by Supreme Court Rule 14, the opinion of the New Jersey State Board of Education and the order of the New Jersey Supreme Court. Accordingly, these decisions are included in Respondent's appendix attached hereto.

LEGAL ARGUMENT

POINT I

THE PETITION FOR A WRIT OF CERTIORARI MUST BE DENIED BECAUSE THE UNITED STATES SUPREME COURT DOES NOT HAVE JURISDICTION.

The United States Supreme Court's certiorari jurisdiction over decisions from state courts derives from 28 U.S.C. § 1257, which provides that:

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn into question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

28 U.S.C. § 1257(a). In the instant matter, Petitioners have challenged the application of procedural regulations to pro se litigants in an action before a state administrative agency. This dispute does not draw into question the validity of a federal statute or the validity of a state statute on the ground that it is repugnant to the Constitution, treaties, or laws of the United States. Rather, the controversy concerns the validity of certain state regulations governing procedure

before state administrative agencies. Further, Petitioners' federal claims were not presented to the state court below. Accordingly, the United States Supreme Court does not have jurisdiction to hear the instant matter.

A. The United States Supreme Court Does Not Have Jurisdiction Because the Instant Matter Does Not Draw Into Question the Validity of Any State or Federal Statute.

The instant matter exclusively involves a challenge to the application of state regulations to pro se litigants in an action before a state administrative agency. The Appellate Division and the State Board decided this mater entirely on the basis of state administrative procedure regulations. This matter does not implicate any state statute, federal statute or the federal constitution.

The State Board and the Appellant Division relied on New Jersey administrative procedure regulations and New Jersey Court Rules in their determination that the Petitioners' appeal to the State Board was properly dismissed for their persistent refusal to serve their brief upon opposing counsel. In pertinent part, the State Board discussed that the New Jersey Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 *et seq.*, governing service and filing of papers in contested cases before administrative agencies, provides that "[a]ny paper filed shall be served in the manner provided by (a) above upon all attorneys or other representatives and upon all parties appearing pro se, either before filing or promptly thereafter unless otherwise provided by order." N.J.A.C. 1:1-7.1(b). Moreover, the State Board noted that the administrative procedure rules were consistent with the rules governing practice in the New Jersey

courts which provide that briefs and other papers filed in civil actions "shall be served upon all attorneys of record in the action and upon parties appearing pro se. . . ." N.J. Ct. R. 1:5-1(a). The State Board determined that the Petitioners' repeated refusal to serve their brief on opposing counsel in violation of the administrative procedure rules warranted the dismissal of their appeal for failure to perfect.

The Appellate Division affirmed the decision of the State Board for the reasons espoused in the State Board's opinion. In addition, the Appellate Division contrasted N.J.A.C. 6A:3-8.1 on which Petitioners claimed to have relied. This regulation explicitly applies only to cases involving a child's entitlement to attend school and, in such matters, relieves pro se petitioners from serving the opposing party. The Appellate Division discussed that the underlying matter in this case concerned Petitioners' son's suspension from riding the school bus. Petitioners' son was not, at any time relevant to the instant matter, excluded from school. Thus, the Appellate Division explained that N.J.A.C. 6A:3-8.1 clearly did not apply to Petitioners' claim.

Based upon the above State regulations, both the State Board and the Appellate Division concluded that the Petitioners, although pro se, were required to follow the applicable procedural rules as other litigants and were obligated to serve their appeal brief on opposing counsel. The State Board and the Appellate Division noted that Petitioners' failure to do so was not the result of ignorance or mistake. Rather, the State Board repeatedly directed the Petitioners to serve opposing counsel in order to perfect their appeal, but Petitioners deliberately refused to do so. The State Board and Appellate Division concluded that the Petitioners' repeated refusal to serve opposing counsel in violation of the administrative procedure rules warranted the dismissal of their appeal for failure to perfect.

Thus, the determination of the Appellate Division and, consequently, the New Jersey Supreme Court's denial of certification, were based upon state administrative regulations and did not concern any state statute, federal statute or the federal constitution. Accordingly, the United States Supreme Court lacks jurisdiction under 28 U.S.C. § 1257 and the Petition for Writ of Certiorari should be denied.

B. The United States Supreme Court Does Not Have Jurisdiction Because the Federal Claims Were Not Presented to the State Court Below.

The Petitioners assert in their Petition for Writ of Certiorari that the procedural regulations under Title 6A and Title 1 of the New Jersey Administrative Code violate the No Child Left Behind Act and the Sixth and Fourteenth Amendments of the United States Constitution. However, these claims were not presented to the New Jersey Supreme Court. The United States Supreme Court does not have jurisdiction where the federal question has not been raised and decided in the state court below. *Illinois v. Gates*, 462 U.S. 213, 218, 103 S. Ct. 2317, 2322, 76 L. Ed. 2d 527 (1983). A petition can not raise for the first time on writ of certiorari an alleged constitutional violation where the state court had no opportunity to pass upon the issue. *Monks v. New Jersey*, 398 U.S. 71, 90 S. Ct. 1563, 26 L. Ed. 2d 54 (1970). It must be clear from the record that a claim under a federal statute or the federal constitution was presented to and addressed by the state court below. *Webb v. Webb*, 451 U.S. 493, 496, 101 S. Ct. 1889, 1892, 68 L. Ed. 2d 392 (1981). For example, references to due process requirements in Petitioners' brief to the Alabama Supreme Court were insufficient to establish that they had fairly raised that issue

in the state court when the court's decision did not address that issue. *Adams v. Robertson*, 520 U.S. 83, 88, 117 S. Ct. 1028, 1030, 137 L. Ed. 2d 203 (1997).

Petitioners never raised the No Child Left Behind Act claim or the Sixth Amendment claim before the State courts below. While Petitioners alluded to the Fourteenth Amendment in their brief before the Appellate Division, the Appellate Division did not address the issue and, moreover, the Petitioners did not raise the Fourteenth Amendment claim in their Petition for Certification to the New Jersey Supreme Court. Consequently, the New Jersey Supreme Court did not have occasion to consider any of these issues. Thus, the United States Supreme Court does not have jurisdiction to consider the Petitioners' claims regarding the No Child Left Behind Act and the Sixth and Fourteenth Amendments because these issues were not raised before the New Jersey Supreme Court. Accordingly, the United States Supreme Court should deny the petition for a writ of certiorari.

POINT II

THE UNITED STATES SUPREME COURT SHOULD NOT EXERCISE ITS DISCRETION TO GRANT THE PETITION FOR A WRIT OF CERTIORARI.

Pursuant to the United States Supreme Court Rules, review on a writ of certiorari is not a matter of right, but of judicial discretion. Sup. Ct. R. 10. A petition for a writ of certiorari will be granted only for compelling reasons. *Id*. The following indicates the character of reasons the United States Supreme Court considers in granting a writ of certiorari:

(a) a United States court of appeals has entered a decision in conflict with the decision of

> another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such departure by a lower court, as to call for an exercise of this Court's supervisory power;
>
> (b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;
>
> (c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

Id. Petitioners have not met the standard set forth under Rule 10 for granting a writ of certiorari because the New Jersey courts have not decided an important question of federal law. Rather, in the instant matter, Petitioners have challenged the application of procedural regulations to pro se litigants in an action before a state administrative agency. This dispute does not implicate an important or unsettled question of federal law. Thus, the United States Supreme Court should deny the petition for a writ of certiorari.

A. The United States Supreme Court Should Deny the Petition for a Writ of Certiorari Because the Matter Does Not Involve an Important Federal Question.

No important question of federal law is implicated in this matter. As discussed in Section I, A, above, the instant matter exclusively involves the application of state regulations to litigants in an action before a state administrative agency. The Appellate Division and the State Board decided this mater entirely on the basis of state administrative procedure regulations. This matter does not involve any federal law.

Moreover, this matter does not implicate any violation of federal constitutional rights as Petitioners have so vaguely asserted in their petition. Petitioners allege that the confusing nature of the state administrative procedure regulations has infringed upon their rights under the Sixth and Fourteenth Amendments to the United States Constitution. At the outset, it should be noted that the Sixth Amendment applies to criminal proceedings and, thus, is clearly not implicated in the instant matter. Further, this matter is certainly not a case of a pro se litigant denied the opportunity to bring forth a potentially meritorious claim due to the stringent application of complicated rules of procedure. To the contrary, this matter arises purely from the Petitioners' outright refusal to serve their brief upon counsel for the Board after repeated direction from the State Board to do so. The State Board exercised leniency with respect to the procedural rules and gave Petitioners every opportunity to perfect their appeal. Nevertheless, the Petitioners obstinately refused to comply with the State Board's direction. Under these facts, the Petitioners cannot now claim that their federal constitutional rights have been violated.

Finally, Petitioners have alleged that the state administrative procedure regulations do not comply with the No Child Left Behind Act. Petitioners have not cited to any provision of the No Child Left Behind Act in support of this claim. Furthermore, Petitioners do not provide a citation to the provision of the No Child Left Behind Act which they purportedly quote in their petition for writ of certiorari. We cannot discern any legal basis for Petitioners' claim with regard to the No Child Left Behind Act. The purpose of No Child Left Behind is to improve student academic achievement, hold schools accountable for pupil progress, increase the number of highly qualified teachers in the classroom, offer school choice options, provide supplemental educational services to meet the educational needs of all students, particularly at-risk youth, and to support state and local educational reform efforts. 20 U.S.C. § 6301; 20 U.S.C. § 6601; 20 U.S.C. § 7201. The No Child Left Behind Act has no relevance to the instant dispute which simply involves the application of state procedural regulations to litigants in an action before a state administrative agency. Moreover, Petitioners' underlying complaint in this matter did not involve any alleged violation of the No Child Left Behind Act. Accordingly, since this matter does not present an important federal question, the United States Supreme Court should deny the petition for a writ of certiorari.

B. The United States Supreme Court Should Deny the Petition for a Writ of Certiorari Because Federal Law is Well-Settled on this Issue.

It is well-settled across the federal circuits that pro se litigants are not absolved from compliance with the relevant rules of procedure. *Martinez-McBean v. Government of Virgin Islands*, 562 F.2d 908, 912 (3d Cir. 1977); *Birl v. Estelle*,

660 F.2d 592, 593 (5th Cir. 1981); *Carter v. C.I.R.*, 784 F.2d 1006, 1008 (9th Cir. 1986); *King v. Atiyeh*, 814 F.2d 565, 567 (2d Cir. 1987); *Moon v. Newsome*, 863 F.2d 835, 837 (11th Cir. 1989); *DiCesare v. Stuart*, 12 F.3d 973, 979 (10th Cir. 1993); *Eagle Eye Fishing Corp. v. U.S. Dep't of Commerce*, 20 F.3d 503, 506 (1st Cir. 1994); *Jones v. Phipps*, 39 F.3d 158, 163 (7th Cir. 1994); *Ackra Direct Marketing Corp. v. Fingerhut Corp.*, 86 F.3d 852, 856 (8th Cir. 1996). In fact, the United States Supreme Court has indicated that the right of self-representation is not "a license not to comply with relevant rules of procedural and substantive law." *Faretta v. California*, 422 U.S. 806, 834 n.46, 95 S. Ct. 2525, 2541, 45 L. Ed. 2d 562 (1975).

As previously discussed, the State Board of Education in this matter afforded Petitioners multiple opportunities to cure their deficiency. The State Board repeatedly instructed Petitioners as to the requirement that they serve their appeal brief on opposing counsel and provided Petitioners with opposing counsel's name and address. Nonetheless, the Petitioners obstinately refused to abide by the State Board's direction. The State Board afforded Petitioners every opportunity to ensure that they perfected their appeal. There has been no miscarriage of justice here. The Petitioners must accept the consequences of their recalcitrance. Accordingly, since this matter does not implicate an important, unsettled question of federal law, the United States Supreme Court should deny the Petition for Writ of Certiorari.

CONCLUSION

For the foregoing reasons, Respondent, Board of Education of the Bridgewater-Raritan Regional School District, respectfully requests that the United States Supreme Court deny the Petition for Writ of Certiorari.

Respectfully submitted,

NICHOLAS CELSO, III
Counsel of Record
STEPHEN J. EDELSTEIN
JACQUELYN A. PELOSI
CHRISTOPHER R. WELGOS
SCHWARTZ SIMON EDELSTEIN
CELSO & KESSLER LLP
Attorneys for Respondent
10 James Street
Florham Park, NJ 07932
(973) 301-0001

APPENDIX A — ORDER OF THE SUPREME COURT OF NEW JERSEY DENYING PETITION FOR CERTIFICATION FILED SEPTEMBER 8, 2006

SUPREME COURT OF NEW JERSEY
C-7 September Term 2006
59,688

D.T., & M.T., ON BEHALF OF MINOR CHILD, N.T.,

Petitioners-Petitioners,

v.

BRIDGEWATER-RARITAN REGIONAL BOARD OF EDUCATION, et al.,

Defendant-Respondent.

ON PETITION FOR CERTIFICATION

To the Appellate Division, Superior Court:

A petition for certification of the judgment in A-3629-04 having been submitted to this Court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied, with costs.

WITNESS, the Honorable Virginia A. Long, Presiding Justice, at Trenton, this 6th day of September, 2006.

s/ [illegible]
CLERK OF THE SUPREME COURT

APPENDIX B — STATE BOARD OF EDUCATION DECISION

EDU #6982-03 (#45-03), #470-03 (#9-04)

C #610-03E, #13-04, #213-04, #214-04, #215-04, #217-04, #220-04L, #221-04L

SB #45-03, #9-04, #24-04, #25-04, #26-04, #27-04, #28-04, #29-04 (consolidated)

D.T. AND M.T., on behalf of minor child, N.T.,

PETITIONERS-APPELLANTS,

V.

BOARD OF EDUCATION OF THE BRIDGEWATER-RARITAN REGIONAL SCHOOL DISTRICT, SOMERSET COUNTY,

RESPONDENT-RESPONDENT,

AND

D.T., on behalf of minor child, N.T.,

PETITIONER-APPELLANT,

V.

BOARD OF EDUCATION OF THE BRIDGEWATER-RARITAN REGIONAL SCHOOL DISTRICT, SOMERSET COUNTY,

RESPONDENT-RESPONDENT.

Appendix B

Decision on motion by the Commissioner of Education,
October 29, 2003

Decided by the Commissioner of Education,
January 20, 2004

Decision on motions by the Commissioner of Education,
February 11, 2004

Decided by the Commissioner of Education, May 20, 2004

Decided by the Commissioner of Education, May 21, 2004

For the Petitioners-Appellants, D.T. and M.T., *pro se*

For the Respondent-Respondent,
Daniel C. Soriano, Jr., Esq.

D.T. and M.T. (hereinafter "appellants") filed eight separate petitions of appeal with the Commissioner of Education challenging disciplinary actions taken against their son, N.T., by the Board of Education of the Bridgewater-Raritan Regional School District (hereinafter "Board" or "Bridgewater-Raritan Board"). After the Commissioner dismissed the petitions, the appellants filed the instant appeals to the State Board. The briefing schedule was placed into abeyance at the appellants' request so that they could obtain hearing transcripts, and the appeals were consolidated. Following reestablishment of the briefing schedule, the appellants filed a brief in support of their consolidated appeal on November 19, 2004.

Appendix B

By letter dated November 30, 2004, the Director of the State Board Appeals Office notified the appellants that:

> Daniel Soriano, Jr., Esq., counsel for the Bridgewater-Raritan Board has advised this office by phone call and letter dated November 30, 2004 that he has not received a copy of your appeal brief, which was filed with the State Board Appeals Office on November 19, 2004. Although you did include a proof of service showing that a copy of your brief was sent to the Bridgewater-Raritan Board's administrative office, Mr. Soriano has indicated that the Board has not received this filing.
>
> Please be advised that since the Bridgewater-Raritan Board is represented by counsel, it is your responsibility to provide a copy of your brief to that counsel. Accordingly, you must provide a copy to Mr. Soriano by December 10, 2004. His address is: 90-92 Grove Street, P.O. Box 1062, Somerville, NJ 08876. You must also provide this office by that date with proof that you mailed your brief to Mr. Soriano. The Bridgewater-Raritan Board's answer brief will be due 20 days after Mr. Soriano receives your brief.
>
> Be further advised that copies of all future submissions to the State Board must be sent directly to Mr. Soriano, rather than to the Bridgewater-Raritan Board. Given the history of problems effectuating service of papers in this

> matter, it would be prudent for both parties to send copies of all filings to each other by certified mail, return receipt requested.

By letter dated December 9, 2004, appellant D.T. responded that any further correspondence from the Director of the State Board Appeals Office would be regarded as a "form of Harassment [sic]." In response to the Director's notification that the appellants were required to serve the Board's counsel with their brief, D.T. stated that:

> The Respondent/Board counsel is not the Petitioners [sic] counsel (Thank God) as it's clearly the responsibility of the Respondent/Board to forward and provide upon their counsel with any additional submissions and copies, especially at their own expenses.

D.T. maintained that the appellants:

> **should always be able to send all mail, school letters and submissions with or without legal docket #'s upon the Respondent/Board.** ***Splitting up mail and*** **letters,** ***does not defeat any purpose as the Respondent/Board will continue their*** **violations even** ***with a hello letter mailed by the Petitioners as the Respondent/Board needs to stop with the mailing*** **games. The Respondent/Board without-a-doubt should be accepting and acknowledging all mail from the Petitioners and should never refuse mail or accept it (saying it never came) knowing that**

> **the mail was not returned back to the Petitioners.** [Emphasis in original.]

D.T. indicated at the bottom of his letter that a copy was sent to the Board. There is no indication that a copy of the letter was sent to Mr. Soriano. Nor did D.T. indicate that a copy of the appellants' brief was sent to Mr. Soriano.

By letter dated December 14, 2004, the Director of the State Board Appeals Office again advised the appellants of their responsibility to serve a copy of their brief on Mr. Soriano:

> By letter dated November 30, 2004, you were advised that Daniel Soriano, Jr., Esq., counsel for the Bridgewater-Raritan Board, had not received a copy of your appeal brief, which was filed with this office on November 19, 2004. You were notified of your obligation to provide a copy of your brief to Mr. Soriano by December 10, 2004 and also to provide this office by that date with proof of service indicating that you had mailed your brief to Mr. Soriano.
>
> As of this date, we have not received a proof of service from you. As a result, this matter is being referred to the Legal Committee of the State Board of Education for consideration of your failure to perfect the appeal.

Appendix B

By letter dated January 15, 2005, appellant D.T. replied, *inter alia*:

> The Petitioners had always satisfied the required *Rules*, of service and mailings of all submissions (over 2 years of mailing) upon the Respondent/Board. Please also be aware of that the Petitioners technically and as stated within *Title 18A Education*, that *Pro-Se Petitioners* don't actually need to send submissions upon the Respondent/Board, never alone needing to send extra additional copies. The submissions are sent directly to the Respondent/Board once received by the appropriate office. But either way, the Petitioners satisfied the required *Rules* of service. [Emphasis in original.]

Again, the appellant indicated that a copy of his letter was sent to the Board. He did not indicate that a copy was sent to Mr. Soriano, and again he failed to provide proof of service of the appeal brief on Mr. Soriano.

Parties to appeals before the State Board of Education are required to serve all other parties with a copy of their submissions and to provide the State Board with proof of such service. *N.J.A.C.* 6A:4-1.10(a). *N.J.A.C.* 1:1-7.1(b), which governs contested cases in administrative agencies, makes it clear that service is to be made *"upon all attorneys or other representatives* and upon all parties appearing pro se. . . ." [Emphasis added.] This requirement is consistent with the rules governing practice in the New Jersey courts, where briefs and other papers filed in civil actions "shall be

served *upon all attorneys of record in the action* and upon parties appearing pro se. . . ." R. 1:5-1(a). [Emphasis added.] Cf. Rule 5, Federal Rules of Civil Procedure (service on a party represented by an attorney is made on the attorney unless the court orders service on the party). Consequently, as the appellants were instructed by letters dated November 30 and December 14, 2004, they were required to serve a copy of their appeal brief, as well as all other submissions, on Mr. Soriano in his capacity as counsel for the Bridgewater-Raritan Board.

Mr. Soriano has represented that neither he nor the Board received a copy of the appellants' brief. The appellants were notified on two separate occasions of their obligation to send a copy to Mr. Soriano, and they were given the opportunity to cure this deficiency. Despite such notice, it is apparent from their responses that the appellants have willfully failed and refused to provide Mr. Soriano with a copy of their brief. In view of the circumstances presented, we find such willful noncompliance to be fatal to the appellants' appeal. The appellants' opinion regarding the nature of their obligation does not supersede the express regulatory requirements. Although we are loath to dismiss an appeal on these grounds, the appellants' recalcitrance leaves us no option. Given the representation by Mr. Soriano that neither he nor the Board have received a copy of the appeal brief, the appellants' refusal to provide him with a copy deprives the Board of the opportunity to file a response thereto.[1] Hence, while we are

1. Although the appellants submitted proof of service of their brief on the Bridgewater-Raritan Board at its administration building, the appellants, as explained herein, were obliged to serve the Board's counsel, and they ultimately were responsible for assuring that Mr. Soriano received a copy of the brief.

mindful of the appellants' status as *pro* se litigants, we conclude under these particular circumstances that dismissal of the appeal is warranted.[2]

Accordingly, we dismiss the consolidated appeal in this matter.

February 2, 2005

Date of mailing _____

---

2. We note that a similar dispute arose in the proceedings before the Commissioner in this matter. In his decisions of May 20 and May 21, 2004, the Commissioner noted that it was not necessary to resolve the issue of the appellants' failure to serve Mr. Soriano with a copy of their papers since the Bridgewater-Raritan Board's response to the petitions was not necessary for a fair determination of the matter.

(3)

No. 06-799

FILED
MAR 2 - 2007
OFFICE OF THE CLERK
SUPREME COURT, U.S.

In The

Supreme Court of the United States

D.T. & M.T.ON BEHALF OF MINOR CHILD, N.T.,

Petitioner,

v.

BRIDGEWATER-RARITAN REGIONAL,

Respondent,

Petition for a Writ of Certiorari to the New Jersey Supreme Court

Reply Brief in Support of Petition For Writ of Certiorari

Dominick Theresa
Bx 10777
New Brunswick, NJ 08906
908-208-1960

March 2, 2007

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INTRODUCTION

The United States Supreme Court should take the opportunity to provide guidance in evaluating all Pro-se Petitioners standards as it now affects the distribution in N.J.A.C. 6A:3-8.1 from one Pro-se Petitioner to another and not in parallel with the federally required laws of the No Child Left Behind Act. This Court has jurisdiction and should grant the Petition for a Writ of Certiorari.

REASONS FOR GRANTING THE WRIT

1. The Respondents are misleading the court by these false statements and using all misguiding case laws as the Pro-se Petitioners did provide Prima Facie evidence on the No Child Left Behind Act and the Fourteenth Amendment, within their briefs on the lower courts.

The Respondents Brief of Opposition claims that the Pro-se Petitioners do not have a right to have their Petition for a Writ of Certiorari heard, for the reason that the Pro-se Petitioners "allegedly" did not previously present evidence in the lower courts, of the information on the No Child Left Behind (NCLB) Act and the Fourteenth Amendment of the United States Constitution.

The Respondents are misleading the court by these false statements and using all misguiding case laws. The Pro-se Petitioners did provide evidence of information on the No Child Left Behind Act and the Fourteenth Amendment, within their briefs on the lower courts. The Pro-se Petitioner's brief to the NJ Appellate Division and the NJ Supreme Court had cited to this information, by providing

evidence in the Appendix of the brief (Pra-22 to 27). Also the NJ Education Law Center (Pra-22 to 27) had stated that they also recognized that the rules and regulations regarding Pro-Se Petitioners under N.J.A.C. 6A:3-8.1 are not in parallel with the federally required laws of the No Child Left Behind Act. The NJ Education Law Center also pleaded with the NJ Department of Education that they recognize this issue, in which all Pro-se Petitioners are not treated equally under N.J.A.C. 6A:3-8.1.

However, the lower courts willfully chose to ignore the Prima Facie evidence that was presented (Pra-22 to 27) and denied the Pro-se Petitioner's appeals.

The Respondents are misguiding the courts by directing attention to artificial statements, while trying to have this court ignore the actual matter at hand, which was presented in the lower courts, in regards to the educational polices for Pro-se Petitioners and how they are confusing and discriminatory, which leads to the No Child Left Behind Act and the Fourteenth Amendment.

From the very beginning, the Respondents have been deliberate in trying to deter the courts from the real matter at hand and have repeatedly directed the courts to ignore the most important issue of Pro-se Petitioners under N.J.A.C. 6A:3-8.1 and confusing policies in the educational rule books, which is why a Pro-se Petitioners under N.J.A.C. 6A:3-8.1(a)2 of N.J.A.C. 6A:3-8.1 highly effects the General Public and is of great importance, for the future of all Pro-se Petitioners and their cases being unfairly dismissed. The Pro-se Petitioners did not receive "Due Process to a fair hearing" in the lower Courts, which is required under the Fourteenth Amendment of the United States Constitution.

The Respondents misapplication brief in Opposition to The Petition for Writ of Certiorari only reinforces the need for the United States Supreme Court to grant the Writ.

2. The Pro-se Petitioners were following the section addressed to Pro-se Petitioners, under N.J.A.C. 6A:3-8.1 of Title 18A and Title 6A and did properly serve their brief/petition upon the correct party.

In response to the argument of the Pro-se Petitioners not fulfilling an "alleged" responsibility of serving a copy of their brief upon the School Boards Attorney: In previous briefs provided by the petitioners, to the lower courts there is Prima Facie evidence of a letter dated 2/26/04 (Pa-1 & 2) which was written by NJ Department of Education, the office of the Bureau of Controversies and Disputes, which states that the petitioner did properly serve their brief/petition upon the correct party(s), pursuant to N.J.A.C 6A:3-1.3(a) and (c)4 and that they held evidence submitted by the Pro-se Petitioners, that this was done. It was also noticed in the footnote, of the State Board of Education decision dated 2/2/05. According to the above mentioned Rule and pursuant with Title 18A and Title 6A, under N.J.A.C. 6A:3-8.1(a)2 it states: "Pro-se Petitioners need not submit their brief upon the Respondent District Board of Education, but may instead be filed directly with the Bureau of Controversies and Disputes". "The Bureau will then transmit by facsimile a copy of the petition to the District Board, together with notice of the board's obligation to answer". It would then become the Board's responsibility to forward over any documents to any attorneys that were representing them. It was not the duty of the Pro-se Petitioners to send any briefs to the Board's Attorney. This is all clearly stated under N.J.A.C. 6A:3-8.1.

Hence, the Pro-se Petitioners were following the section

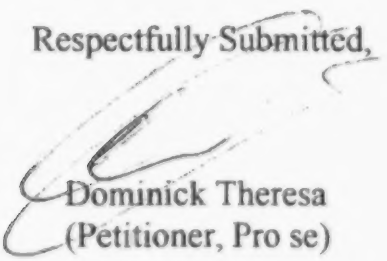
addressed to Pro-se Petitioners, under N.J.A.C. 6A:3-8.1(a)2 of Title 18A and Title 6A. However, this is where the problem seems to lie, under Rule N.J.A.C. 6A:3-8.1, where discrimination of one Pro-se Petitioner to another, is causing incessant harm to cases, in which the importance of a Pro-se Petitioner's case is being over-looked, due to claims from the Respondent that the Pro-se Petitioner's had "allegedly not followed" a certain rule.

This Court should grant the Pro-se Petitioner's Writ of Certiorari.

CONCLUSION

For all the reasons stated above, The Supreme Court of the United States would have jurisdiction in this matter and should exercise the right in granting the Pro-se Petitioner's Writ of Certiorari. This writ clearly presents a matter of substantial question to the General Public Importance and the NCLB Act to have all Pro-se Petitioners treated equally.

Respectfully Submitted,



Dominick Theresa
(Petitioner, Pro se)

Dominick Theresa
Bx 10777
New Brunswick, NJ 08906
908-208-1960